

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE**

JANE DOE, *et al.*, :
Plaintiffs, :
v. : Civil Action No. 05-120-JJF
INDIAN RIVER SCHOOL DISTRICT, *et* :
al., :
Defendants. :

**MOTION TO STRIKE DEFENDANTS' COUNTER-STATEMENT
CONTESTING PLAINTIFFS' STATEMENT RELATED TO PLAINTIFFS' MOTION
FOR SUMMARY JUDGMENT AND STATEMENT OF FACTS OR, IN THE
ALTERNATIVE, MOTION FOR LEAVE OF COURT TO FILE
PLAINTIFFS' COUNTER-STATEMENT OF FACTS**

Plaintiffs hereby move the Court to strike Defendants' counter-statement of facts (D.I. 266) (the "Counter-Statement"). The grounds for this motion are as follows.

1. As the Parties' letters to the Court (D.I. 273, 274) make clear, there has been a longstanding dispute between Plaintiffs and Defendants over the appropriate procedures in filing their competing Motions for Summary Judgment and related briefing. Having reached no resolution to this dispute, Plaintiffs seek resolution by way of this Motion.
2. Plaintiffs have complied with the Court's scheduling order regarding summary judgment briefing in this case. (D.I. 246)
3. In response to Plaintiffs' Motion for Summary Judgment (D.I. 253), Defendants filed the 51-page Counter-Statement, responding to each sentence in the statement of facts set forth in Plaintiffs' Opening Brief in Support of Summary Judgment (D.I. 254).
4. In the Counter-Statement, Defendants categorized each sentence as "contested," "uncontested" or "partially contested." Defendants then added references to deposition

testimony or disputed the meanings of words to create alleged disputes of material fact.

5. The Court should strike the Counter-Statement because it violates both the Court's scheduling order (which Plaintiffs argued – even before Defendants filed the Counter-Statement – controls the procedure for these summary judgment motions) and the Court's standing order (which Defendants argue controls). Whichever order applies, the Counter-Statement is improper.

6. Plaintiffs maintain that the Court's scheduling order, which set forth deadlines for all briefing, including answering and reply briefs, controls. (*See* D.I. 246) The scheduling order does not contemplate the parties' filing separate counter-statements of facts in addition to the briefs. For this reason alone, the Counter-Statement should be stricken.

7. Rather than filing the Counter-Statement "in lieu of" an answering brief as the Court's standing order provides, Defendants simultaneously filed the Counter-Statement *and* Defendants' answering brief (albeit as an exhibit to a motion for leave to file the answering brief). Defendants later insisted that Plaintiffs were obligated to file a reply brief in accordance with the scheduling order, a position not reconcilable with their claim that they have not filed their answering brief.

8. Therefore, Plaintiffs respectfully request that the Court strike the Counter-Statement as an improper filing under the scheduling order.

9. In the alternative, Plaintiffs respectfully request that the Court grant Plaintiffs leave to file Plaintiffs' Counter-Statement of Facts responding to the facts in Defendants' Opening Brief.¹ (D.I. 250)

¹ As Defendants discuss in their letter to the Court, Defendants have filed a separate statement of allegedly undisputed facts, believing it to be "implicit" in the District of Delaware's rules because of rules from other district courts. (*See* D.I. 274 at 2 n.1). Because Defendants' separate

10. Pursuant to Local Rule 7.1.1, counsel for Plaintiffs has contacted counsel for Defendants about the matters discussed in this Motion. We were unable to reach an agreement on the matters set forth in this Motion.

WHEREFORE, Plaintiffs respectfully request that the Court strike the Counter-Statement, or, in the alternative, grant Plaintiffs leave to file a counter-statement.

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statement of facts is not called for by the District of Delaware Local Rules or a standing order, to the extent the Court grants leave to Plaintiffs to file a counter-statement, Plaintiffs would respond to the facts in Defendants' brief, not those included in Defendants' separate statement of facts.